

Title 14: COURT PROCEDURE -- CIVIL

Chapter 205: LIMITATION OF ACTIONS

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Maine Revised Statutes
Title 14: COURT PROCEDURE -- CIVIL
Chapter 205: LIMITATION OF ACTIONS

Subchapter 1: GENERAL PROVISIONS

§751. TWENTY YEARS

Except as provided in Title 11, section 2-725, personal actions on contracts or liabilities under seal, promissory notes signed in the presence of an attesting witness, or on the bills, notes or other evidences of debt issued by a bank shall be commenced within 20 years after the cause of action accrues. [1965, c. 306, §30 (AMD).]

SECTION HISTORY

1965, c. 306, §30 (AMD).

§752. SIX YEARS

All civil actions shall be commenced within 6 years after the cause of action accrues and not afterwards, except actions on a judgment or decree of any court of record of the United States, or of any state, or of a justice of the peace in this State, and except as otherwise specially provided.

§752-A. DESIGN PROFESSIONALS

All civil actions for malpractice or professional negligence against architects or engineers duly licensed or registered under Title 32 shall be commenced within 4 years after such malpractice or negligence is discovered, but in no event shall any such action be commenced more than 10 years after the substantial completion of the construction contract or the substantial completion of the services provided, if a construction contract is not involved. The limitation periods provided by this section shall not apply if the parties have entered into a valid contract which by its terms provides for limitation periods other than those set forth in this section. [1975, c. 434, (NEW).]

SECTION HISTORY

1975, c. 434, (NEW).

§752-B. SKI AREAS

All civil actions for property damage, bodily injury or death against a ski area owner or operator or tramway owner or operator or its employees, as defined under Title 32, chapter 133, whether based on tort or breach of contract or otherwise, arising out of participation in skiing or hang gliding or the use of a tramway associated with skiing or hang gliding must be commenced within 2 years after the cause of action accrues. [1995, c. 560, Pt. H, §5 (AMD); 1995, c. 560, Pt. H, §17 (AFF).]

SECTION HISTORY

1977, c. 608, §1 (NEW). 1979, c. 514, §2 (AMD). 1995, c. 560, §H5 (AMD). 1995, c. 560, §H17 (AFF).

§752-C. SEXUAL ACTS TOWARDS MINORS

1. No limitation. Actions based upon sexual acts toward minors may be commenced at any time.

[1999, c. 639, §1 (NEW); 1999, c. 639, §2 (AFF) .]

2. Sexual acts toward minors defined. As used in this section, "sexual acts toward minors" means the following acts that are committed against or engaged in with a person under the age of majority:

A. Sexual act, as defined in Title 17-A, section 251, subsection 1, paragraph C; or [1999, c. 639, §1 (NEW); 1999, c. 639, §2 (AFF).]

B. Sexual contact, as defined in Title 17-A, section 251, subsection 1, paragraph D. [1999, c. 639, §1 (NEW); 1999, c. 639, §2 (AFF).]

[1999, c. 639, §1 (NEW); 1999, c. 639, §2 (AFF) .]

SECTION HISTORY

1985, c. 343, §1 (NEW). 1989, c. 292, (AMD). 1991, c. 551, §1 (AMD).
1991, c. 551, §2 (AFF). 1993, c. 176, §1 (AMD). 1999, c. 639, §2 (AFF).
1999, c. 639, §1 (RPR).

§752-D. LAND SURVEYORS

All civil actions for professional negligence against a professional land surveyor duly licensed or registered under Title 32 must be commenced within 4 years after the negligence is discovered, but an action may not be commenced more than 10 years after the completion of the contract for services or the completion of the services provided if a contract for services is not involved. [2007, c. 345, §1 (AMD).]

SECTION HISTORY

1993, c. 161, §1 (NEW). 2007, c. 345, §1 (AMD).

§752-E. CRIME VICTIMS; PROFITS FROM CRIME

1. Limitation period. Actions based upon a criminal offense in which, as that offense is defined, there is a victim, as defined in Title 17-A, section 1171, subsection 2, brought by or on behalf of a victim against the offender must be commenced within the limitation period otherwise provided or within 3 years of the time the victim discovers or reasonably should have discovered any profits from the crime, whichever occurs later.

[1997, c. 320, §1 (NEW) .]

2. Notice to victims. A person or organization that knowingly pays or agrees to pay any profits from a criminal offense in which, as that offense is defined, there is a victim to a person charged with or convicted of that crime shall make reasonable efforts to notify every victim, as defined in Title 17-A, section 1171, subsection 2, of the payment or agreement to pay as soon as practicable after discovering that the payment or intended payment constitutes profits from the crime. Reasonable efforts must include, but are not limited to, seeking information about victims from court records and the prosecuting attorney and mailing notice by certified mail to victims whose address is known and publishing, at least once every 6 months for 3 years, in newspapers of general circulation in the area where the crime occurred a legal notice to unknown victims or victims whose address is unknown.

[1997, c. 320, §1 (NEW) .]

3. Definition. As used in this section, "profits from the crime" means any property obtained through or income generated from the commission of a crime; any property obtained by or income generated from the sale, conversion or exchange of proceeds of a crime, including any gain realized by such a sale, conversion or exchange; and any property that the offender obtained by committing the crime or income generated as a result of having committed the crime, including any assets obtained through the use of unique knowledge

obtained during the commission of, or in preparation for the commission of, the crime, as well as any property obtained by or income generated from the sale, conversion or exchange of the property and any gain realized by such a sale, conversion or exchange.

[1997, c. 320, §1 (NEW) .]

4. Construction. Nothing in this section may be construed to expand civil liability or to restrict any defense to civil liability except as specified in subsection 1 with respect to the limitation period.

[1997, c. 320, §1 (NEW) .]

SECTION HISTORY

1997, c. 320, §1 (NEW).

§753. TWO YEARS

Actions for assault and battery, and for false imprisonment, slander and libel shall be commenced within 2 years after the cause of action accrues. [1985, c. 804, §§ 1, 22 (AMD).]

SECTION HISTORY

1985, c. 804, §§1,22 (AMD).

§753-A. ACTIONS AGAINST ATTORNEYS

(REPEALED)

SECTION HISTORY

1985, c. 804, §§2,22 (NEW). 2001, c. 115, §3 (AFF). 2001, c. 115, §1 (RP).

§753-B. ACTIONS AGAINST ATTORNEYS

1. Time when statute starts to run, generally. In actions alleging professional negligence, malpractice or breach of contract for legal service by a licensed attorney, the statute of limitations starts to run from the date of the act or omission giving rise to the injury, not from the discovery of the malpractice, negligence or breach of contract, except as provided in this section or as the statute of limitations may be suspended by other laws.

[2001, c. 115, §2 (NEW); 2001, c. 115, §3 (AFF) .]

2. Rendering of title opinion. In an action alleging professional negligence in the rendering of a real estate title opinion, the statute of limitations starts to run on the date the negligence is discovered, but in no event may an action be commenced more than 20 years after the act or omission giving rise to the injury.

[2001, c. 115, §2 (NEW); 2001, c. 115, §3 (AFF) .]

3. Drafting of last will and testament. In an action alleging professional negligence in the drafting of a last will and testament that has been offered for probate, the statute of limitations starts to run on the date the negligence is discovered.

[2001, c. 115, §2 (NEW); 2001, c. 115, §3 (AFF) .]

SECTION HISTORY

2001, c. 115, §2 (NEW). 2001, c. 115, §3 (AFF).

§754. ONE YEAR

No action shall be commenced against bail unless within one year after judgment was rendered against the principal; nor against sureties on bonds in criminal cases unless within one year after default of the principal; nor against any person adjudged trustee, unless within one year from the expiration of the first execution against the principal and his goods, effects and credits in the hands of the trustee. No action in behalf of the State against sureties in criminal cases shall be brought unless within one year after default of the principal. [1965, c. 356, §10 (AMD).]

SECTION HISTORY

1965, c. 356, §10 (AMD).

Subchapter 2: REAL ACTIONS**§801. RIGHTS OF ENTRY AND ACTION BARRED IN 20 YEARS**

No person shall commence any real or mixed action for the recovery of lands, or make an entry thereon, unless within 20 years after the right to do so first accrued, or unless within 20 years after he or those under whom he claims were seized or possessed of the premises, except as provided in this subchapter.

§802. RIGHT BEGINS TO RUN

If such right or title first accrued to an ancestor, predecessor or other person under whom the plaintiff claims, said 20 years shall be computed from the time when the right or title first accrued to such ancestor, predecessor or other person.

§803. RIGHT DEEMED TO ACCRUE

The right of entry or of action to recover land, as used in this subchapter, first accrues at the following times:

1. When disseized. When a person is disseized, at the time of such disseizin;

2. Heir or devisee. When he claims as heir or devisee of one who died seized, at the time of such death, unless there is a tenancy by the curtesy or other estate intervening after the death of the ancestor or devisor; in that case, his right accrues when such intermediate estate expires, or would expire by its own limitation;

3. Intermediate estate. When there is such an intermediate estate, and in all cases, when the party claims by force of any remainder or reversion, his right accrues when the intermediate estate would expire by its own limitation, notwithstanding any forfeiture thereof for which he might enter at an earlier time.

§804. ENTRY FOR CONDITION BROKEN

Section 803 shall not prevent any person from entering, when so entitled by reason of any forfeiture or breach of condition; but if he claims under such a title, his right accrues when the forfeiture was incurred or the condition broken.

§805. ACCRUAL OF RIGHT OF ENTRY

In all cases not otherwise provided for, the right of entry accrues when the claimant, or the person under whom he claims, first became entitled to the possession of the premises under the title on which the entry or action is founded.

§806. ACTION BY MINISTER OR SOLE CORPORATION

If a minister or other sole corporation is disseized, any of his successors may enter upon the premises or bring an action for their recovery at any time within 5 years after the death, resignation or removal of the person disseized, notwithstanding 20 years after disseizin have expired.

§807. MINORS AND OTHER DISABLED PERSONS

When such right of entry or action first accrues, if the person thereto entitled is a minor, mentally ill, imprisoned or absent from the United States, he, or anyone claiming under him, may make the entry or bring the action at any time within 10 years after such disability is removed, notwithstanding 20 years have expired.

§808. DEATH DURING PERIOD OF DISABILITY

If the person first entitled to make the entry or bring the action dies during the continuance of the disability and no determination or judgment has been had on his title or right of action, the entry may be made or action brought by his heirs, or other person claiming under him, at any time within 10 years after his death, notwithstanding the 20 years have elapsed; but no such further time for bringing the action or making the entry, beyond that hereinbefore prescribed, shall be allowed by reason of the disability of any other person.

§809. DEATH OF TENANT IN TAIL OR REMAINDERMAN BEFORE END OF LIMITATION

When a tenant in tail or a remainderman in tail dies before the expiration of the period limited for making an entry or bringing an action for lands, no person claiming any estate which such tenant in tail or remainderman might have barred shall make an entry or bring an action to recover such land, except within the period during which the tenant in tail or remainderman, if he had so long lived, might have done it.

§810. TYPE OF POSSESSION; NEED FOR ENCLOSURE

To constitute a disseizin, or such exclusive and adverse possession of lands as to bar or limit the right of the true owner thereof to recover them, such lands need not be surrounded with fences or rendered inaccessible by water; but it is sufficient, if the possession, occupation and improvement are open, notorious and comporting with the ordinary management of a farm; although that part of the same, which composes the woodland belonging to such farm and used therewith as a woodlot, is not so enclosed.

§810-A. MISTAKE OF BOUNDARY LINE

If a person takes possession of land by mistake as to the location of the true boundary line, the possessor's mistaken belief does not defeat a claim of adverse possession. [2009 , c. 255 , §1 (AMD) .]

SECTION HISTORY

1993, c. 244, §1 (NEW). 2009, c. 255, §1 (AMD).

§811. FAILURE OF FIRST ACTION; EFFECT ON LIMITATIONS

If the summons and complaint in a real or mixed action fails of sufficient service or return by unavoidable cause, or if by the default or negligence of any officer to whom it was delivered or directed for service, the action is dismissed; or if the action is defeated for any matter of form or by the death or other disability of either party, or if the plaintiff's judgment is reversed on appeal, the plaintiff may commence a new action at any time within 6 months after the determination of the first action or the reversal of the judgment.

§812. ACQUISITION OF RIGHTS-OF-WAY AND EASEMENTS BY ADVERSE POSSESSION; NOTICE TO PREVENT

No person, class of persons or the public shall acquire a right-of-way or other easement through, in, upon or over the land of another by the adverse use and enjoyment thereof, unless it is continued uninterruptedly for 20 years. If a person apprehends that a right-of-way or other easement in or over his land may be acquired by custom, use or otherwise by any person, class of persons or the public, he may give public notice of his intention to prevent the acquisition of such easement by causing a copy of such notice to be posted in some conspicuous place upon the premises for 6 successive days, or in the case of land in the unorganized territory, by causing a copy of such notice to be recorded in the registry of deeds for the county where his land lies,

and such posting or recording shall prevent the acquiring of such easement by use for any length of time thereafter; or he may prevent a particular person or persons from acquiring such easement by causing an attested copy of such notice to be served by an officer qualified to serve civil process upon him or them in hand or by leaving it at his or their dwelling house, or, if the person to whom such notice is to be given is not in the State such copy may be left with the tenant or occupant of the estate, if any. If there is no such tenant or occupant, a copy of such notice shall be posted for 6 successive days in some conspicuous place upon such estate. Such notice from the agent, guardian or conservator of the owner of land shall have the same effect as a notice from the owner himself. A certificate by an officer qualified to serve civil process that such copy has been served or posted by him as provided, if made upon original notice and recorded with it, within 3 months after the service or posting in the registry of deeds for the county or district in which the land lies, shall be conclusive evidence of such service or posting. [1971, c. 450, §1 (AMD).]

SECTION HISTORY

1971, c. 450, §1 (AMD).

§812-A. DEDICATION OF LAND IN THE UNORGANIZED TERRITORY TO PUBLIC USE; NOTICE TO PREVENT

If a person apprehends that his land in the unorganized territory or any interest therein may be dedicated to public use by custom, use or by any act or acts of that person or any persons acting on his behalf, he may give public notice that he has no intent to dedicate his land or any interest therein to public use, by causing a copy of such notice to be recorded in the registry of deeds for the county where the land lies, and such recording shall prevent such dedication. The failure to do so shall not create any implication of dedication. [1971, c. 450, §2 (NEW).]

SECTION HISTORY

1971, c. 450, §2 (NEW).

§812-B. RECORDING REQUIREMENTS

To satisfy the recording provisions of sections 812 and 812-A, with respect to land in the unorganized territory, the notice shall describe the land specifically or by reference to source of title, so as to identify it, and shall not be in the form of a reference to whatever land the person may own in the respective county or township. Such notice shall expire after 10 years but new notices, each effective for a 10-year period, may be so recorded at any time. [1979, c. 541, Pt. A, §138 (AMD).]

SECTION HISTORY

1971, c. 450, §3 (NEW). 1979, c. 541, §A138 (AMD).

§813. ADVERSE OBSTRUCTION ON RIGHTS-OF-WAY; INTERRUPTION BY NOTICE

No right-of-way or other easement existing in, upon, over or through the land of another shall be extinguished by the adverse obstruction thereof, unless such adverse obstruction has been continued uninterruptedly for 20 years. A notice in writing given by the owner of such right-of-way or other easement to the person whose land is subject thereto, setting forth said owner's intention to contest the extinguishment of such right-of-way or other easement, and duly served and recorded as provided in section 812, shall be deemed an interruption of such obstruction and prevent the extinguishment of such right-of-way or other easement.

§814. TRESPASS ON WILD LANDS; NOTICE TO QUIT; RECORD; PRIVATE ROADS IN UNORGANIZED TERRITORY

If any person without right dwells upon or in any manner occupies any lands which on the first day of April, 1883 were wild lands, any owner of such wild lands or of any legal or equitable interest therein may cause a notice to quit such lands to be served upon such person by any sheriff or deputy sheriff, by giving the same to such person in hand. Such officer shall make his return upon a copy of such notice certified by him to be a true copy, and within 60 days thereafter such owner may cause such copy and return to be recorded in the registry of deeds in the county or district where said land is located. Proceedings had and taken as specified shall bar such person who has so entered or dwells upon such wild land from obtaining any rights by adverse possession to the land upon which he has so entered. Such person shall be entitled to the benefits of all the provisions of law relating to betterments.

In roads privately owned in unorganized territory notwithstanding the other provisions of this subchapter, no title or interest shall be acquired against the owners thereof by adverse possession, prescription or acquiescence, however exclusive or long continued.

§815. FORTY YEARS' POSSESSION BARS ACTION FOR RECOVERY OF LAND

No real or mixed action for the recovery of lands shall be commenced or maintained against any person in possession thereof, when such person or those under whom he claims have been in actual possession for more than 40 years, claiming to hold them by adverse, open, peaceable, notorious and exclusive possession, in their own right.

§816. LIMITATIONS OF ACTIONS FOR UNCULTIVATED LANDS IN INCORPORATED PLACES

No real or mixed action for the recovery of uncultivated lands or of any undivided fractional part thereof, situated in any place incorporated for any purpose, shall be commenced or maintained against any person, or entry made thereon, when such person or those under whom he claims have, continuously for the 20 years next prior to the commencement of such action or the making of such entry, claimed said lands or said undivided fractional part thereof under recorded deeds; and have, during said 20 years, paid all taxes assessed on said lands or on such undivided fractional part thereof, however said tax may have been assessed whether on an undivided fractional part of said lands or on a certain number of acres thereof equal approximately to the acreage of said lands or of said fractional part thereof; and have, during said 20 years, held such exclusive, peaceable, continuous and adverse possession thereof as comports with the ordinary management of such lands or of undivided fractional parts of such lands in this State.

§817. LIMITATION OF ACTIONS FOR BREACH OF COVENANTS; VESTED INTEREST IN 6-YEAR LIMITATIONS PERIOD

1. Twenty years. An action on a breach of covenants in any deed or other instrument for the conveyance of real property in this State or any interest therein must be commenced within 20 years after the cause of action accrues. This subsection applies to all deeds and other instruments for the conveyance of real property executed on or after October 7, 1967.

[2011, c. 124, §1 (NEW) .]

2. Vested interest in 6-year statute of limitations; notice, right of action; trial. A person who is a party to an instrument conveying real property that was not executed under seal and for which the 6-year statute of limitations on causes of action for breach of covenants expired before the effective date of this section and who claims the benefit of the 6-year statute of limitations may record within 12 months of the effective date of this section in the registry of deeds where the instrument is recorded or the property is located a conformed copy of the notice set forth in this subsection.

A. The notice must include the names of the current record owner of the real property that was the subject of the instrument and the mortgagees of record. Within 20 days of recording the notice, the person shall give a copy of the notice to the current record owners and the mortgagees by mailing by the United States Postal Service, postage prepaid. The notice must be substantially as follows.

"NOTICE

By virtue of the Maine Revised Statutes, Title 14, section 817, subsection 2, the following instrument that was not executed under seal is deemed to be subject to a 20-year limitations period for breach of covenants if no claim of a vested right to assert the 6-year statute of limitations for breach of covenants is timely made:

(list here the instrument by grantor name, grantee name, date of execution and recording information, if any)

This instrument affects real estate located at (identify here street location, municipality and county where the real estate is located).

Pursuant to the Maine Revised Statutes, Title 14, section 817, the undersigned hereby claims a vested right to assert the defense of statute of limitations for any cause of action asserting a breach of covenants in the above described instrument that is not commenced within 6 years of the date the cause of action accrued."

[2011, c. 124, §1 (NEW) .]

B. A person receiving a notice under paragraph A is barred from maintaining an action for breach of covenants under the identified instrument by the 6-year limitations period unless within one year from the date of the recording of the notice the person files in the registry of deeds where the notice was recorded a statement under oath claiming application of the 20-year statute of limitations. The claim to applicability of the 20-year statute of limitations is barred unless, within 180 days of the recording of the statement, the claimant or a person on behalf of the claimant commences a declaratory judgment action under Title 14, chapter 707. [2011, c. 124, §1 (NEW) .]

C. Upon trial of an action initiated under paragraph B, the court shall declare the 20-year limitations period applicable if the court finds that:

- (1) The grantee of the instrument did not, at the time of delivery of the instrument, intend for the 6-year statute of limitations to apply; or
- (2) The grantor executed the instrument fraudulently or in bad faith. [2011, c. 124, §1 (NEW) .]

[2011, c. 124, §1 (NEW) .]

SECTION HISTORY

2011, c. 124, §1 (NEW) .

Subchapter 3: MISCELLANEOUS ACTIONS

§851. ACTIONS AGAINST SHERIFF FOR ESCAPE; FOR MISCONDUCT

Actions for escape of prisoners committed on execution shall be commenced within one year after the cause of action accrues, but actions against a sheriff, for negligence or misconduct of himself or his deputies, shall be commenced within 4 years after the cause of action accrues.

§852. MUTUAL AND OPEN ACCOUNTS CURRENT

In contract actions to recover the balance due, where there have been mutual dealings between the parties, the items of which are unsettled, whether kept or proved by one party or both, the cause of action shall be deemed to accrue at the time of the last item proved in such account.

§853. PERSONS UNDER DISABILITY MAY BRING ACTION WHEN DISABILITY REMOVED

If a person entitled to bring any of the actions under sections 752 to 754, including section 752-C, and under sections 851 and 852 and Title 24, section 2902 and, until July 1, 2017, section 2902-B is a minor, mentally ill, imprisoned or without the limits of the United States when the cause of action accrues, the action may be brought within the times limited herein after the disability is removed. [2013, c. 329, §1 (AMD) .]

SECTION HISTORY

1977, c. 492, §2 (AMD). 1985, c. 343, §2 (AMD). 2013, c. 329, §1 (AMD).

§854. ACTIONS FOR BREACH OF PROMISE TO MARRY PROHIBITED

No action or proceeding to recover damages for breach of promise to marry shall be maintained.

§855. COMMENCEMENT OF NEW ACTION AFTER FAILURE, DEFEAT OR REVERSAL

When a summons fails of sufficient service or return by unavoidable accident, or default, or negligence of the officer to whom it was delivered or directed, or the action is otherwise defeated for any matter of form, or by the death of either party the plaintiff may commence a new action on the same demand within 6 months after determination of the original action; and if he dies and the cause of action survives, his executor or administrator may commence such new action within said 6 months.

**§856. DEATH OF EITHER PARTY BEFORE ACTION COMMENCED
(REPEALED)**

SECTION HISTORY

1979, c. 540, §17 (RP).

§857. RIGHTS OF ALIEN ENEMIES IN TIME OF WAR

If a person is disabled from prosecuting an action in this State by reason of being an alien subject or citizen of a country at war with the United States, the time during which such war continues shall not be a part of the period herein limited for the commencement of any of said actions.

§858. LIMITATION ON ACTIONS FOR PENALTIES

Actions for any penalty or forfeiture on a penal statute, brought by a person to whom the penalty or forfeiture is given in whole or in part, shall be commenced within one year after the commission of the offense. If no person so prosecutes, it may be recovered by civil action, indictment or information in the name and for the use of the State at any time within 2 years after the commission of the offense, and not afterwards.

§859. LIMITATION EXTENDED IN CASES OF FRAUD

If a person, liable to any action mentioned, fraudulently conceals the cause thereof from the person entitled thereto, or if a fraud is committed which entitles any person to an action, the action may be commenced at any time within 6 years after the person entitled thereto discovers that he has just cause of action, except as provided in section 3580. [1985, c. 641, §1 (AMD).]

SECTION HISTORY

1985, c. 641, §1 (AMD).

§860. RENEWAL OF PROMISE IN WRITING

In actions founded on any contract, no acknowledgment or promise takes the case out of the operation hereof, unless the acknowledgment or promise is express, in writing and signed by the party chargeable thereby. No such acknowledgment or promise made by one joint contractor affects the liability of the others.

§861. JUDGMENT WHERE ACTION BARRED AGAINST SOME AND NOT OTHERS

In actions against 2 or more joint contractors, if it appears on trial or otherwise that the plaintiff is barred by the provisions hereof as to one or more of the defendants, but is entitled to recover against any other by virtue of a new acknowledgment, promise or otherwise judgment shall be rendered for the plaintiff against such other, and for the other defendants against the plaintiff.

§862. WHEN NONJOINDER OF DEFENDANTS IS PLEADED

In an action on a contract, if the defendant pleads that another person ought to have been jointly sued and issue is joined thereon, and it appears on the trial that the action was barred by the provisions hereof against such person, the issue shall be found for the plaintiff.

§863. PARTIAL PAYMENT AND INDORSEMENT

Nothing herein contained alters, takes away or lessens the effect of payment of any principal or interest made by any person, but no indorsement or memorandum of such payment made on a promissory note, bill of exchange or other writing, by or on behalf of the party to whom such payment is made or purports to be made, is sufficient proof of payment to take the case out of the statute of limitations. No such payment made by one joint contractor or his executor or administrator affects the liability of another.

§864. PRESUMPTION OF PAYMENT AFTER 20 YEARS

Every judgment and decree of any court of record of the United States, or of any state, or justice of the peace in this State shall be presumed to be paid and satisfied at the end of 20 years after any duty or obligations accrued by virtue of such judgment or decree.

§865. APPLICATION OF LIMITATIONS TO COUNTERCLAIMS

All the provisions hereof respecting limitations apply to any counterclaim by the defendant except a counterclaim arising out of the transaction or occurrence that is the subject matter of the plaintiff's claim to the extent of the demand in the plaintiff's claim. The time of such limitation shall be computed as if an action had been commenced therefor at the time the plaintiff's action was commenced. [1969, c. 367, §1 (AMD).]

SECTION HISTORY

1969, c. 367, §1 (AMD).

§866. DEFENDANT OUT OF STATE WHEN ACTION COMMENCED; INSOLVENCY

If a person is out of the State when a cause of action accrues against him, the action may be commenced within the time limited therefor after he comes into the State. If a person is absent from and resides out of the State, after a cause of action has accrued against him, the time of his absence from the State shall not be taken as a part of the time limited for the commencement of the action. If a person is adjudged an insolvent debtor after a cause of action has accrued against him, and such cause of action is one provable in insolvency, the time of the pendency of his insolvency proceedings shall not be taken as a part of the time limited for the commencement of the action. No action shall be brought by any person whose cause of action has been barred by the laws of any state, territory or country while all the parties have resided therein.

§867. FOREIGN CORPORATIONS COVERED BY LIMITATIONS

Any foreign corporation, doing business continuously in this State and having constantly an officer or agent resident herein on whom service of any process may be made, shall be entitled to the benefit of all provisions of law relating to limitation of actions the same as domestic corporations.

§868. ACTION TO RECOVER DAMAGES FOR LAND TAKEN FOR PUBLIC USE

No action or proceeding shall be brought or maintained to recover damages caused by the taking of any land, rights or other property to be used for a public purpose when such taking has been authorized by the Legislature, unless the same is commenced within 3 years after the cause first accrued for which the same or like proceedings might have been commenced, nor shall any compensation be awarded for damages sustained for more than 3 years before the commencement of proceedings to recover the same.

§869. ACTION BARRED WHEN NO ADMINISTRATOR 6 YEARS AFTER DEATH

Where no administration is had upon the estate of a deceased person within 6 years from the date of death of said decedent and no petition for administration is pending, all actions upon any claim against said decedent shall be barred.

§870. JUDGMENT BY PERJURY; ACTION ON CASE

1. Action; within 3 years. When a judgment has been obtained against a party by the perjury of a witness introduced at the trial by the adverse party, the injured party may, within 3 years after that judgment or after final disposition of any motion for relief from the judgment, bring an action against such adverse party, or any perjured witness or confederate in the perjury, to recover the damages sustained by the injured party by reason of such perjury. The judgment in the former action does not bar an action under this section.

[2009, c. 187, §1 (NEW) .]

2. Specificity of claim. A claim under this section must identify the specific testimony alleged to be false at the initial filing of the claim.

[2009, c. 187, §1 (NEW) .]

3. Record; evidence. A claim may not be submitted under this section solely on the same record as in the former trial. Evidence discoverable by due diligence before the trial cannot be introduced as new evidence to establish perjury.

[2009, c. 187, §1 (NEW) .]

4. Standard of proof. The plaintiff in an action under this section must prove the alleged perjury by clear and convincing evidence.

[2009, c. 187, §1 (NEW) .]

5. Affirmative defense. It is an affirmative defense to an action under this section that the plaintiff has no new evidence to present concerning the alleged perjury.

[2009, c. 187, §1 (NEW) .]

6. Strictly construed. The pleading and proof requirements of this section must be strictly construed.

[2009, c. 187, §1 (NEW) .]

SECTION HISTORY

2009, c. 187, §1 (RPR).

§871. PUBLIC WORKS CONTRACTORS' SURETY BOND LAW OF 1971

1. Title. This section shall be known and may be cited as the "Public Works Contractors' Surety Bond Law of 1971".

[1971, c. 59, (NEW) .]

2. Person and claimant. The terms "person" and "claimant" and the masculine pronoun as used in this section shall include individuals, associations, corporations or partnerships.

[1971, c. 59, (NEW) .]

3. Surety bonds. Except as provided in Title 5, section 1745, before any contract exceeding \$125,000 in amount for the construction, alteration or repair of any public building or other public improvement or public work, including highways, is awarded to any person by the State or by any political subdivision or quasi-municipal corporation or by any public authority, that person must furnish to the State or to the other contracting body, as the case may be, the following surety bonds:

A. A performance bond in an amount equal to the full contract amount, conditioned upon the faithful performance of the contract in accordance with the plans, specifications and conditions thereof. Such a bond is solely for the protection of the State or the contracting body awarding the contract, as the case may be. A performance bond issued pursuant to this paragraph must include on its face the name of and contact information for the surety company that issued the bond; and [2007, c. 500, §1 (AMD) .]

B. A payment bond in an amount equal to the full amount of the contract solely for the protection of claimants supplying labor or materials to the contractor or the contractor's subcontractor in the prosecution of the work provided for in the contract. The term "materials" includes rental of equipment. A payment bond issued pursuant to this paragraph must include on its face the name of and contact information for the surety company that issued the bond. [2007, c. 500, §1 (AMD) .]

When required by the contracting authority, the contractor shall furnish bid security in an amount the contracting authority considers sufficient to guarantee that if the work is awarded the contractor will contract with the contracting agency.

The bid security may be in the form of United States postal money order, official bank checks, cashiers' checks, certificates of deposit, certified checks, money in escrow, bonds from parties other than bonding companies subject to an adequate financial standing documented by a financial statement of the party giving the surety, bond or bonds from a surety company or companies duly authorized to do business in the State.

The bid security may be required at the discretion of the contracting authority to ensure that the contractor is bondable.

The bid securities other than bid bonds must be returned to the respective unsuccessful bidders. The bid security of the successful bidder must be returned to the contractor upon the execution and delivery to the contracting agency of the contract and performance and payment bonds, in terms satisfactory to the contracting agency for the due execution of the work.

In the case of contracts on behalf of the State, the bonds must be payable to the State and deposited with the contracting authority. In the case of all other contracts subject to this section, the bonds must be payable to and deposited with the contracting body awarding the contract.

[2007, c. 500, §1 (AMD) .]

3-A. Letter of credit. Notwithstanding the surety bond requirements of subsection 3, at the discretion of the State or other contracting authority, a person may provide an irrevocable letter of credit in lieu of the performance bond required by subsection 3, paragraph A or the payment bond required by subsection 3, paragraph B, or both, to the State or the contracting authority, as the case may be. For purposes of this subsection, "letter of credit" has the same meaning as in Title 11, section 5-1102, subsection (1), paragraph (j).

A. The letter of credit must be:

- (1) Issued in favor of the State or other contracting authority by a federally insured financial institution;
- (2) In a form satisfactory to the State or other contracting authority; and
- (3) In an amount equal to the full amount of the contract. [2007, c. 500, §2 (NEW) .]

B. In order to issue an irrevocable letter of credit as an alternative to a surety bond under this subsection, a financial institution or its parent company must:

- (1) Maintain a long-term unsecured debt rating of at least "A3" issued by Moody's Investors Service, Inc. or "A-" issued by Standard and Poor's Corporation;
- (2) Maintain a short-term commercial paper rating within the 3 highest categories established by Moody's Investors Service, Inc. or Standard and Poor's Corporation; or
- (3) Be certified in writing by the Superintendent of Financial Institutions that the financial institution's capital ratios, as calculated in the most recent quarterly consolidated report of condition and income, meet or exceed the requirements for well-capitalized financial institutions. [2007, c. 500, §2 (NEW) .]

C. If the letter of credit has an expiration date that is earlier than the date of acceptance of performance of the contract in accordance with the plans, specifications and conditions of the contract, a replacement letter of credit that meets the specifications of paragraph A must be delivered to the State or other contracting authority not later than 30 days prior to that expiration date. [2007, c. 500, §2 (NEW) .]

[2007, c. 500, §2 (NEW) .]

4. Actions. Any person who has furnished labor or material to the contractor or to a subcontractor of the contractor in the prosecution of the work provided for in a contract in respect to which a payment bond has been furnished under subsection 3, paragraph B, and who has not been paid in full before the expiration of 90 days after the day on which the last of the labor was performed by that person or material was furnished or supplied by that person for which a claim is made, may bring an action on the payment bond in that person's own name for the amount, or the balance thereof, unpaid at the time of the institution of the action. Any such claimant having a direct contractual relationship with a subcontractor of the contractor furnishing such a payment bond but no contractual relationship, express or implied, with that contractor does not have the right

of action upon that payment bond unless the claimant has given written notice to the contractor within 90 days from the date on which the claimant performed the last of the labor, or furnished or supplied the last of the material for which the claim is made, stating with substantial accuracy the amount claimed and the name of the party to whom the material was furnished or supplied or for whom the labor was done or performed. Such a notice must be served by registered or certified mail, postage prepaid, in an envelope addressed to the contractor at any place the contractor maintains an office or conducts business, or at the contractor's residence.

Any such action may not be commenced after the expiration of one year from the date on which the last of the labor was performed or material was supplied for the payment of which the action is brought , except that in the case of a material supplier, when the amount of the claim is not ascertainable due to the unavailability of final quantity estimates, the action may be commenced before the expiration of one year from the date on which the final quantity estimates are determined. The notice of claim from the material supplier to the contractor furnishing the payment bond must be filed before the expiration of 90 days following the determination by the contracting authority of the final quantity estimates.

The contracting body and the agent in charge of its office shall furnish to anyone making written application therefor who states that the person has supplied labor or materials for such work and payment therefor has not been made, or that the person is being sued on any such bond, or that the person is the surety thereon, a certified copy of the bond and the contract for which it was given, which copy is prima facie evidence of the contents, execution and delivery of the original. Applicants shall pay for the certified copies such reasonable fees as the contracting body or the agent in charge of its office fixes to cover the actual cost of preparation thereof.

[2007, c. 500, §3 (AMD) .]

5. Application. This section shall not apply to any contract awarded pursuant to any invitation for bids issued on or before September 23, 1971 or to any bonds furnished in respect to any such contract.

[1971, c. 622, §53 (AMD) .]

6. Jurisdiction. An action on a performance bond furnished under subsection 3, paragraph A or an action on a payment bond furnished under subsection 3, paragraph B in accordance with subsection 4 must be brought in the county in this State where the construction, alteration or repair of the public building or other public improvement or public work is located.

[2007, c. 500, §4 (NEW) .]

SECTION HISTORY

1971, c. 59, (NEW). 1971, c. 622, §53 (AMD). 1973, c. 625, §82 (AMD).
1985, c. 154, (AMD). 1985, c. 554, §2 (AMD). 1989, c. 483, §A31 (AMD).
1993, c. 436, §1 (AMD). 2007, c. 500, §§1-4 (AMD).

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